

REMARKS

The Office finally rejected claims 1, 2, 4 and 5. Applicant has added new claim 16. The application currently includes claims 1, 2, 4, 5 and 16.

The Office Action rejected independent claim 1 under 35 U.S.C. §103(a) as being unpatentable over French Patent No. 2,595,190 (hereinafter the Poget patent) in view of U.S. Patent No. 172,736 (hereinafter the Henderson patent). The Office Action alleges that the Poget patent discloses all of the elements of independent claim 1 except for the claim elements of the side edges of the base having a length between 40% and 50% of a distance from the base edge to the leading end and where the cutting edge is serrated. The Office Action alleges that the Henderson patent discloses a knife section (A) with a serrated cutting edge where the side edges of the base have a length between 40% and 50% of a distance from the base edge to the leading edge. The Office Action alleges that it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the side edges of the Henderson patent on the knife section of the Poget patent in order to enable easy handling for sharpening.

Applicant respectfully disagrees that the Poget patent in view of the Henderson patent makes independent claim 1 obvious. Applicant submits that the Office Action has failed to establish a prima facie case of obviousness because neither the Poget patent or the Henderson patent teaches, suggests or discloses a cutting line of the sickle section being about 14% of the length of the straight line as claimed. Applicant submits that "about" cannot be interpreted to be about 50% of the claimed value as alleged in the Office Action as this interpretation of the prior art is not reasonable.

Further, Applicant does not understand the reference made to Pierson, U.S. Patent No. 912,164. The Office Action alleged the Pierson patent discloses a ratio of lines of about 13%. However, there must be some teaching or suggestion to combine references.

Applicant submits that absent the present invention there is motivation, teaching or suggestion to combine the Pierson patent with either the Poget patent or the Henderson patent. The Pierson patent does not disclose a cutting line that continually moves away from a center plane of the sickle section as claimed. Rather, the Pierson patent discloses sickle sections which

when secured to a sickle bar, has a restricted opening to the cutting area which decreases the capacity of the sickles due to the sickle's "curved back" design.

Because of the "curved back" design, the sickle disclosed in the Pierson patent has a cutting edge that is further away from the center plane than at the middle point of the center plane. This is contrary to the claimed invention which claims a cutting edge moving continually away from a center plane.

Applicant has calculated that the cutting area of the claimed sickle is 55% greater than the cutting area of the sickle disclosed in the Pierson patent. Applicant has also calculated that the opening between the sickle sections at the distal end when mounted to a sickle bar that is about 73% greater than the opening between the ends of the sickles disclosed in the Pierson patent. The greater opening and cutting area provides for a high capacity sickle to harvest crops that is not obtainable with the design of the Pierson patent.

Applicant also submits that the "curved back" design of the sickle section disclosed in the Pierson patent was utilized to hold stalks while being cut. The edges also are smooth and required sharpening, typically by hand.

In contrast, the present invention, as claimed in claim 5, utilizes serrated edges which are self-sharpening and do not require sharpening by hand. Since the sickle sections are self-sharpening there is no need for the "curve back" design of a sickle as disclosed in the Pierson patent which reduces cutting capacity and the size of stalks to be cut.

Therefore, the only motivation, teaching or suggestion to allege that the Pierson patent could be utilized to reject independent claim 1 and dependent claims 2, 4, and 5 is the present application itself. As such, Applicant submits that the combination including the Pierson patent is improper.

Also, in the August 24, 2006 Amendment, Applicant submitted evidence of secondary considerations when it submitted the Declaration of David S. Majkrzak. The Declaration provided facts that the sickle of the present invention addresses the longfelt need of increasing the capacity of a sickle bar to move a harvester more quickly through the field while cutting the stalks of grain which in turn decreases the amount of time required to harvest the crops in paragraph 5. Further,

the sickle sections as claimed address a long felt need of providing a durable sickle section in a no-tillage and minimum tillage farming techniques which aids in reducing the costs of planting and harvesting crops (See paragraphs 7-9 of the Majkrzak Declaration).

Further, with the introduction of "Bio-Tech Corn", the stocks have become harder and more difficult to cut. The sickle section of the present invention provides the unexpected results of having the capacity and durability to cut a bio-tech cornstock. (See paragraph 10 of the Majkrzak Declaration).

Further, Applicant has provided additional evidence which is attached to the David S. Majkrzak's Declaration at paragraphs 14-16 as Exhibits A-C. Exhibit A provided evidence of commercial success. Exhibits B-C address the issues of long felt need including increasing capacity of the sickle sections which reduces harvesting time, particularly in no tillage or minimum tillage forming techniques.

Applicant submits that the Office Action did not address any of the secondary considerations provided to overcome the obviousness rejection. Applicant submits that the secondary considerations and the arguments previously presented with respect to the prior art clearly show that the present application is in allowable form.

In the Advisory Action mailed on May 7, 2007, the Office alleges that the ratio of about 14% is new matter in independent claim 1. The Advisory Action noted that the drawings cannot be considered original disclosure of the 14% as Applicant never said the drawings were to scale.

Applicant respectfully disagrees that any new matter has been added to independent claim 1. The specification is defined by the disclosure, claims, abstract and drawings as filed and whether new matter has been added is determined based upon the specification as filed. Applicant has not amended the configuration of the drawings in adding this claim element. Further, Applicant is not claiming a specific length or distance. Rather, Applicant is claiming a ratio which defines the arcuate shape as disclosed in the original specification. The ratio does not change the shape of the arcuate cutting surface. Rather, the ratio only defines the cutting surface that was previously disclosed. Therefore, Applicants respectfully submit that no new matter has been added to the

application in independent claim 1.

Further, regarding the allegation that requires Applicant to have a statement that the drawings are to scale, Applicant respectfully requests that the Office provide authority showing that a statement that the drawing is to scale is required. If no such authority can be provided, Applicant respectfully requests that the new matter objection be withdrawn and that independent claim 1 be allowed.

Because independent claim 1 is allowable, it follows that dependent claims 2, 4 and 5 also be allowed. Reconsideration and allowance of claims 2, 4 and 5 are respectfully requested.

Applicant has also added independent claim 16 to the application. Independent claim 16 claims, among other elements, that when two knife sections are positioned adjacent each other, the resulting cutting edge is a portion of a substantially elliptical configuration. There is no disclosure in any of the cited references of such a cutting edge when two knife sections are positioned side by side. Therefore, Applicant submits that independent claim 16 is in allowable form.

Applicant submits that the application is in allowable form. Reconsideration and allowance are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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